Filed 6/2/04 In re Larry P. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LARRY P., a Person Coming Under the Juvenile Court Law.	B169447 L.A.Super.Ct. No. FJ 29456)
THE PEOPLE, Plaintiff and Respondent, v. LARRY P., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Mitchel J. Harris, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

_____

Cheryl Barnes Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Michael C. Keller and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

_____

The defendant juvenile claims the trial court erred in failing to consider his educational needs before committing him to the California Youth Authority. We reject his allegation and affirm the judgment.

Defendant first came to the attention of juvenile authorities at age 15 when he used a gun to attempt to intimidate the victim into joining defendant's "tagging crew." He was placed on probation. He failed the probation when, at the age of 16, he came up behind an 84 year old woman, pulled at her purse, knocked her down, and fractured her pelvis. A petition alleging attempted robbery with bodily injury was sustained and defendant was committed to camp.

Defendant failed the camp program via a series of behavioral violations, including a physical altercation with another juvenile and refusing to obey counselors' instructions. The probation officer told the trial court he had worked diligently to help defendant succeed in camp, to no avail. He recommended a Youth Authority commitment. The trial court accepted the recommendation.

A forensic psychologist had examined defendant for the disposition hearing. Defendant, who had been in special education for grades 9-11, suffered from attention deficit disorder, obsessive-compulsive disorder, learning disorder, and marijuana dependence. The psychologist felt defendant also suffered a mild neurological disorder that created difficulty with hand-eye coordination. He felt a placement such as the Dorothy Kirby Center could help defendant.

"Education Code section 56000 declares that 'all individuals with exceptional needs have a right to participate in free appropriate public education . . . .' 'Individuals with exceptional needs' include any child who is '[i]dentified by an individualized education program [IEP] team as a child with a disability,' as defined by the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), whose impairment 'requires instruction, services, or both[,] which cannot be provided with modification of the regular school program' and who meets certain other prescribed eligibility criteria. (Ed. Code, § 56026, subds. (a), (b), (c) & (d).) A child qualifies as an individual with exceptional needs if the IEP team determines 'the degree of the pupil's impairment . . . requires

special education in one or more of the program options authorized by Section 56361 of the Education Code.' (Cal. Code Regs., tit. 5, § 3030.)

"California Rules of Court, rule 1493(e)(5) [in effect at the time] implements this legislative mandate to provide free special education services to all eligible children by declaring that the juvenile court, when declaring a child a ward of the court, 'must consider the educational needs of the child . . . .'" (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1397-1398, fns. omitted.)

At first blush, our case seems almost identical to *Angela M*. There, the child suffered from similar disorders. However, there a psychologist testified that Angela "'must undergo an IEP []' assessment." (*In re Angela M., supra,* 111 Cal.App.4th at p. 1395.) Nothing to the contrary was presented to the trial court, which ignored the recommendation. The appellate court sent the matter back to the trial court for an IEP evaluation. Here, no mention of an IEP exists, except in the probation report which contains the following: "(Note parent conferences, SARBs, IEPs, special ed needs) none[.]" Nothing was mentioned about an IEP during the disposition hearing nor did defendant's counsel mention any special educational needs other than to observe that defendant "would get an education in camp just as he would get in the Youth Authority."

The psychologist's report had defendant, an 11th grader, describing himself as "a good student." He had been in special education since the 9th grade and could read at a 6th grade level. The psychologist's recommendations said nothing about an IEP or special educational needs, but instead opined that defendant's problems such as attention deficit disorder and substance abuse could best be dealt with at the Dorothy Kirby Center.

The probation report noted that no school records had been obtained because defendant was not attending school and had not "for a long time."

The *Angela M*. requirement is that the trial court "'must consider the educational needs of the child . . . .'" (*In re Angela M., supra,* 111 Cal.App.4th at p. 1398, fn. omitted.) The court considered the issue to the extent it was presented. *Special* educational considerations or the need for an IEP were not at issue during the disposition hearing. The trial court dealt with everything presented.

Education Code section 56026, subdivision (e), exempts from its definitions of "'individuals with exceptional needs'" those "whose educational needs are due primarily to . . . social maladjustment . . . ." Despite defendant's disorders, the evidence and arguments presented to the trial court at the disposition hearing showed that defendant could function educationally to some extent so long as he behaved himself and followed the rules. This was insufficient to call into question the need for an IEP.

DISPOSITON

The judgment is affirmed.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

MALLANO, J.